

INITIAL STATEMENT OF REASONS

Archeological Rules -2002

[Notice Published July 26, 2002]

Title 14 of the California Code of Regulations (14 CCR):

Amend:

Section 895.1 Definitions.

Section 929.1 [949.1, 969.1] Plan, and Emergency Notice Preparation.

Section 929.2 [949.2, 969.2] Protection Measures for THPs and Emergency Notices 3 Acres and Larger.

Section 929.3 [949.3, 969.3] Post Review Site Discovery.

Section 929.4, [949.4, 969.4] Archaeological Training Requirements.

Section 929.5, [949.5, 969.5] Site Recording.

Section 1037.5(a) Review Teams to be Establish.

Section 1052(a)(10) Emergency Notice.

14 CCR § 895.1 Definitions

PUBLIC PROBLEM, ADMINISTRATIVE REQUIREMENT, OR OTHER CONDITION OR CIRCUMSTANCE THE REGULATION IS INTENDED TO ADDRESS

Archaeological Coverage Map This existing definition will be revised for clarity and to correct an error in the rules. A few years ago, 14 CCR Section 1052 was revised and re-numbered. During the review of those changes, the Board overlooked reference to this rule section in the definition for “Archaeological Coverage Map.”

Confidential Archaeological Addendum The problem with existing rules is that RPFs have different types of computer systems and some have had difficulty using the CDF form. This change will enable those RPFs to develop their own format for presenting the required information, and the final product will have a more professional appearance without formatting errors.

Confidential Archaeological Letter

The problem with existing rules is that RPFs have different types of computer systems and some have had difficulty using the CDF form. This change will enable those RPFs to develop their own format for presenting the required information, and the final product will have a more professional appearance without formatting errors.

Native Americans This existing definition mentions a Native American contact list provided to the Director by the Native American Heritage Commission (NAHC). The NAHC has indicated that they are not adequately staffed or budgeted to continue to provide this list to the Director.

Native American Contact List The current rule clarity is needed to indicate the composition of the list, which agency is responsible for its development and maintenance, and how this list will be made available to the public.

Native American Archaeological or Cultural Site This is a new definition added to the rules for clarity not provided in the current rules.

Significant Archaeological or Historical Site This existing definition was revised for clarity.

Confidential Archaeological Addendum for Timber Operations on Non-federal Lands in California This form is referenced in existing rules and is presented in the rules in 14 CCR § 895.1. The regulations already specify the items of information that must be presented in the Confidential Addendum so this form is unnecessary and duplicative. Further

SPECIFIC PURPOSE OF THE REGULATION

Archaeological Coverage Map The revision proposed here is needed to reflect the fact that what used to be 1052(d) is now referenced as 1052(a)(10). Reference to 14 CCR § 929.1 [949.1, 969.1] was revised to further specify the subsection of (c)(9). The word “Section” is replaced with the symbol for section (§) for consistency, and “included” is replaced with “required” for clarity.

Confidential Archaeological Addendum This existing definition will be revised for clarity and to remove reference to the form entitled “CDF Confidential Archaeological Addendum for Timber Operations on Non-Federal Lands in California”. With this change, the public will no longer be required to use a specific form to present the archaeology information for a plan. CDF will continue to provide a form for this purpose but RPFs will have the option to use CDF’s Form or present the required information in another manner. Additional changes to the definition were made for clarity and rule consistency.

Confidential Archaeological Letter This existing definition will be revised for clarity and to remove reference to the form entitled “CDF Confidential Archaeological Addendum for Timber Operations on Non-Federal Lands in California”. As stated above, the public will no longer be required to use this form on THPs. Current rules allow RPFs to present the archaeology information for Emergency Notices on either the referenced form or a letter format. The form will no longer be referenced in the rules, so the definition was revised for clarity to indicate that RPFs may present the required information in either a

letter or a report format. Reference to specific subsections were renumbered to match changes in this regulatory proposal. The simple renumbering of existing items in this section is necessary for consistency if changes in THP requirements proposed elsewhere in this package are adopted. These renumbering change would not change requirements for Confidential Archaeological Letters (CALs) written for Emergency Notices. Another change would revise the requirements. This proposal would add a new section (10) to the list of items that must be contained in a CAL. This item is a preliminary determination of significance of identified archaeological and historical sites, if damaging effects from timber operations cannot be avoided. This rule is needed to ensure adequate review of timber operations. The rules do not prohibit timber operations from occurring within the boundaries of sites. CDF needs this information to adequately review potential effects.

Native Americans The change is necessary to clarify the role of CDF and the NAHC in the development and maintenance of the Native American Contact List. This rule change will separate the existing definition of “Native Americans” from the term “Native American Contacts List” and provide a clearer definition for each term. In addition, it was unclear whether or not the NAHC is a required contact under the term “Native Americans.” This change will provide the public with needed clarity and indicate that the NAHC is a required contact.

Native American Contact List This is a new definition added to the rules. Existing rule language defines this list under the term “Native Americans”, but additional clarity is needed to indicate the composition of the list, which agency is responsible for its development and maintenance, and how this list will be made available to the public. A separate definition for the term is introduced to accomplish this need for clarity and to bring the rules in compliance with CEQA. The revised definitions would clarify that the Native American Heritage Commission (NAHC) is a required contact, in addition to appropriate local tribal groups and individuals, for every county on the Native American Contact List. This change is needed to ensure compliance with state law. The requirement to consult with responsible agencies is found in PRC 21104 and CEQA Appendix B lists the NAHC as one of the agencies with statutory authority. Additional authority for the NAHC is found in PRC 5097, and case law has clarified that the NAHC must be consulted during the review of THPs (EPIC vs. Johnson 1985). Current rules do not accomplish this required procedure, but changing the definition of “Native Americans” to include the NAHC will enable the NAHC to receive announcements and notices required in the rules. This will bring the process in compliance with CEQA. The NAHC utilizes the project announcements received from RPFs to conduct a check of their Sacred Lands File and provide any results from this check much earlier in the process. This will reduce the likelihood of project delays. The other changes in the definition were made to clarify the role of the NAHC and CDF in the creation, maintenance, and use of the List.

Native American Archaeological or Cultural Site This is a new definition added to the rules for clarity. The proposed new rules would require RPFs to provide a written notification to Native Americans anytime a Native American archaeological or cultural site is identified within the site survey area. The purpose of this notification is to alert Native

Americans that such resources have been identified, indicate how they will be protected, and provide an opportunity to comment prior to CDF's approval. This step is required in CEQA but is not currently addressed in the rules. The new term needs to be defined in the rules to give the public clarity on what types of sites will require the second notice.

Significant Archaeological or Historical Site This existing definition was revised for clarity. The change in subsection (e) will utilize the term "Native Americans" which is defined in the regulations. The term "California Indians" in existing rules is not defined. This change is necessary to provide clarity on who has authority to identify cultural or religious sites and provide consistent in its use of the term "Native Americans" that is defined in the rules.

Confidential Archaeological Addendum for Timber Operations on Non-federal Lands in California This form is referenced in existing rules and is presented in the rules in 14 CCR § 895.1. This proposal would delete both reference to the form and the form itself from the rules. The regulations already specify the items of information that must be presented in the Confidential Addendum so this form is unnecessary and duplicative. In addition, the change will allow RPFs to present the required information in a variety of formats at the option of the RPF. CDF will continue to provide a form for those RPFs that wish to use it. Other RPFs may choose to develop their own version of a report form while others yet will choose to present the required information in a report format. The rule change will give RPFs greater flexibility to present required information in a professional manner and eliminate unnecessary duplication of rule requirements.

NECESSITY

These existing definitions will be revised and new definitions adopted for clarity and to correct an error in the rules. The confidential archeological addendum is being removed to allow more flexibility to the regulated public during submission.

14 CCR §§ 929.1 [949.1, 969.1] Plan, and Emergency Notice Preparation.

PUBLIC PROBLEM, ADMINISTRATIVE REQUIREMENT, OR OTHER CONDITION OR CIRCUMSTANCE THE REGULATION IS INTENDED TO ADDRESS

There are several problems with the current regulation. The regulation references a form that is being deleted from regulation. The Native Americans are confused by the existing rule as it relates to where the harvest is being proposed, what is expected of them with regard to site disclosure and how this information is to be handled, that the information will be confidential. The regulation does not identify the CEQA requirement that new site discovery and protection must be passed along to the Native Americans. The regulation does not identify the CEQA requirement that the Native Americans have a time to comment on those protection measures provided to the sites. There was a unnecessary burden placed on the regulated public to send information to the Information Centers that the Department could more easily perform.

SPECIFIC PURPOSE OF THE REGULATION

A minor editorial changes was made to the title of this section that replaced “THPs” with the word “Plans”. This was to achieve consistency with the entire set of rules. References in this section were revised to add the complete reference. This proposal would make a minor formatting change to subsection (a) to bring up the phrase “Prior to submitting a Plan, the RPF, or the RPF’s supervised designee:” and place it directly after the bold title “Preparing a Plan”. This change will add clarity. Current rules show this phrase as part of subsection (a) but it is impossible to reference.

Changes to subsection (a)(1) are needed for clarity to specify where the archaeological records check must be obtained. Reference to the form entitled “Archaeological Records Check Request for a CDF Project” is deleted. CDF will continue to provide this form but its use will no longer be required in the regulations. This form asks RPFs to include information that is beyond requirements found in these regulations so its use should not be required for plan preparation. That form is used for all types of CDF Projects, not just THPs. Editorial changes to this subsection were made for clarity.

Changes to subsection (a)(2) were made to clarify the purpose and content of the required written notification to Native Americans. It clarifies the purpose of this notice. This clarification is needed because RPFs will be required to send a second notice to Native Americans in certain instances, so clarification on the purpose of the initial notice is necessary to avoid confusion. Editorial changes were made to improve clarity. Many of the changes to this subsection were intended to provide more complete information in the initial notice sent to Native Americans regarding the location of the plan. The Native American community has repeatedly requested better maps and more complete information in this notice and has expressed difficulty in visualizing where a project is located under current rules. The ambiguity of the location of the proposed plan reduces the effectiveness of consultation and exchange of information. This rule will now require RPFs to provide Native Americans with two maps, a general location map and a copy of the USGS quad map, as part of this notification. Current rules require only one map of any type. This rule change will result in better locational information provided to Native Americans making it easier for them to complete their review without unnecessary time spent finding out where the project is located. Subsections (a)(2)(C),(D), and (E) were revised to clarify that replies to this notice should be directed to the RPF and provides more complete information regarding the length of time available to submit comments. Current rules suggest the RPF includes language in this notice that recommends comments be directed to CDF. This is a problem because CDF may not yet have received the plan is incapable of answering questions about the proposed project. Native Americans receiving notices under current rules are often confused regarding the length of time available to submit comments. These changes provide needed clarity.

Subsection (a)(4) was also added for clarity. 14 CCR § 929.1[949.1,969.1](c) lists the types of required information the RPF shall include in the Confidential Archaeological Addendum. The item specified in subsection (5) is a list of research done prior to the field survey. That requirement already exists in existing regulations but is not specifically

listed in the list of tasks the RPF must do during plan preparation. This change is needed for clarity and consistency. The intent of the existing rules is to require this important step to be completed, but recently, some plan submitters have found a loophole in current rule language that allows the step to be skipped. 14 CCR Section 929.1[949.1,969.1](c)(5) requires the RPF to include “a list of research done prior to field survey including literature reviewed and persons contacted” in the CAA. Some plan submitters have been leaving this section blank indicating that no research has been done. The current rules only require RPFs to list what they did; they do not specifically require the research to be completed. This revision would close that loophole by listing the task under RPF requirements. CDF has reviewed several plans over the past several years where RPF has skipped this important step resulting in failure to identify and protect significant archaeological sites that existed on the property. Several times, for example, the landowner knew of a site but the RPF never asked about it. This kind of research is a required step in professional archaeological survey protocols and clarification is needed to ensure the rules meet those same professional standards.

This proposal would create a new subsection (b) under 14 CCR § 929.1 [949.1,969.1] that would require RPFs to provide a written notice to Native Americans for certain THPs. Under the current rules, RPFs are required to inform Native Americans that a THP is being prepared, notify them of the THP location, and invite them to share any information they may have about Native American archaeological or cultural sites within the proposed THP boundaries. RPFs usually complete this task very early in the process of preparing a THP. It provides a way for RPFs to be informed about the presence of cultural resources that local tribes may know to exist within the proposed project area. This process plays a crucial role in identifying those sacred sites, traditional properties, or other locations of religious or cultural importance that may exist within the project area because these types of resources may not be found during the on-the-ground archaeological survey. It also gives Native Americans early notice of a project in the event they wish to participate in the THP review process. This step does not, however, satisfy certain other requirements found in CEQA and confirmed by case law (*EPIC vs. Johnson* 1985). CEQA (PRC 21104) requires *Lead Agencies* to consult with appropriate review agencies. CEQA Appendix B lists gives the Native American Heritage Commission (and the local tribes they represent) with statutory authority to act as review agency for projects that could adversely affect Native American archaeological resources. To satisfy CEQA requirements the THP process described in regulations must require a formal notice be sent to Native Americans. This notice must disclose the presence of a site(s), the specific actions taken to protect such sites, and provide Native Americans with opportunity to comment prior to project approval. This would be accomplished with these proposed revisions. It would add a new Section 929.1[949.1,969.1](b) that would require RPFs to provide written notification to Native Americans when a THP contains a Native American archaeological or cultural site. It specifies the elements to be included in the Notice as well as the requirement that CDF be sent copies of the notices for inclusion in the administrative record in the event of legal challenge. The rule also specifies that CDF shall allow a minimum of 15 days for receipt of comments prior to the close of public comment. The 15-day time period is specified in existing regulations (14 CCR Section 1037.4) and in the Forest Practice Act itself (PRC Section 4582.7). Note: CDF estimates that 20% of THPs (200 out of 1000 per year) would

require written notification of the presence of Native American archaeological or cultural sites within that THP.

As mentioned above, this rule change will add a new noticing task for RPFs to complete, one that is required by state law. The best place to insert this requirement would be immediately after subsection (a). This change will then require the remaining subsections to be re-numbered. Existing subsections 929.1[949.1,969.1](b) through (f) would be renumbered 929.1[949.1,969.1] (c) through (g).

This proposal will change the requirement in 14 CCR § 929.1[949.1,969.1](c)(1)(G) concerning signatures on the CAA. It is necessary to add “RPF or” to the signature line to cover those instances where the archaeological surveyor that previously conducted work on the property is not available for signature. Acknowledgement for responsibility is needed for clarity and enforcement ability.

Subsection (2) concerning Archaeological Records Check information was revised to delete reference to a specific form. As mentioned earlier, use of this form is no longer required in the rules so this section needed revisions to be consistent with earlier changes.

Subsection (3) concerning results of notification to Native Americans was also revised. The word “consultation” was replaced with notification for clarity and consistency. This rule change would also require the RPF to indicate which copy of the Native American Contacts List was used by providing its date of issue as a required information item. CDF makes frequent revisions to the list. This information item is required for CDF to be able to determine if the appropriate list was used. It also indicates that information provided by the NAHC needs to be included. This change is necessary to ensure consistence with existing rules and to enable CDF to adequately review a plan. This change is needed to ensure any “hits” resulting from the Sacred Lands File check conducted by the NAHC are identified evaluated in the THP.

This proposal would add a new subsection (4) to 929.1[949.1,969.1](c) specifying that RPFs must include new information on the CAA for certain THPs. It would require RPFs to provide the results of written notification to Native Americans of the presence of Native American archaeological or cultural sites within the THP boundaries if those activities were required by the new rules proposed herein. This second notice was previously discussed in the context of RPF tasks. A corresponding change is needed in the section to require the results of that notice to be contained within the CAA. This is necessary to enable CDF to review the THP for conformance with the rules and to give consideration to any comments received as required by CEQA.

As mentioned above, this proposal would add new subsection 929.1[949.1,969.1](a)(4) that clarifies that RPFs must conduct research prior to the field survey. A corresponding change is needed in Section 929.1[949.1,969.1](d)(5) to clarify that the results of that research must be presented in the plan. Prefield research is a standard professional practice and is necessary for a thorough inventory. Neglecting to ask the landowner if any archaeological sites or features had ever been found on the property would be

unprofessional and has led to unnecessary site destruction. The current rule requires RPFs to provide a list of what prefield research was done. Sometimes RPFs indicate nothing was done - they provide CDF with an “empty” list. This is clearly not the intent of existing rules, but technically, it is not currently prohibited. This change would clarify that RPFs must review some literature and must make contact with individuals likely to have knowledge of archaeological and historical sites within or adjacent to the project area. It would also require RPFs to include results of such information within the CAA. This is needed by CDF for review of the plan and to take enforcement action if the procedure is not completed.

This proposal would require the RPF to indicate the date or dates that the archaeological survey was conducted. This information is needed by CDF Archaeologists reviewing the adequacy of the archaeological survey methods used by the RPF. This new requirement is intended to prevent the inclusion of deceptive or false information in the CAA. The need for this new requirement became apparent when one of CDF’s archaeologists became aware that an RPF had actually “conducted” his archaeological survey in January, a time when the ground was covered with snow, thus making an effective inspection of the ground surface impossible. During the past few years CDF has asked RPFs when they conducted the survey. It was an important question to explore the adequacy of the RPFs effort to search for sites. In those instances the RPF responded that they did not remember. This minor change will prevent those kinds of problems.

This proposal will change the site recording requirements specified in 14 CCR § 929.1[949.1,969.1](d). It will require the RPF or the RPF’s supervised designee to submit completed site records at the time of THP submittal rather than anytime prior to plan approval. This change is needed to correct a problem with current rules. When RPFs propose timber operations within a significant archaeological or historical site, the CDF Archaeologist reviewing the Confidential Archaeological Addendum needs a copy of the completed site record in order to determine if the protection measures are adequate. The information contained in the site record is needed during the Preharvest Inspection by the CDF Inspector to ascertain if entering the site as proposed by the RPF would be likely to damage the resource. Since the RPF presently is not required to provide site records until just prior to plan approval, the CDF Inspector may not have sufficient information to accurately determine if site damage is likely to occur. Also, RPFs are required to submit site records prepared in accordance with professional standards requiring review by the Department. Because the current rules allow RPFs to stagger submittal of work products, CDF Archaeologists are thus required to perform multiple reviews. This rule change is needed to maximize the efficiency of the Department’s small number of professional archaeologists. This rule was revised to clarify recording responsibilities during those instances when sites are discovered after plan submittal, such as during the preharvest inspection. RPFs or their supervised designees are responsible to submit completed site records for significant sites discovered after plan submittal.

14 CCR § 929.1[949.1,969.1](d). was revised for consistency and clarity, and the reference in subsection (2)(B) was renumbered to correspond to previously discussed rule changes.

14 CCR § 929.1[949.1,969.1](g) was revised to have CDF, rather than the RPF, be responsible for accomplishing the task of sending completed CAAs, CALs, and site records to the Information Centers. The current rule requiring RPFs to do this has been difficult to implement, costly to review, almost impossible to enforce, and has been generally ineffective in ensuring that copies of the reports and records are provided to the appropriate Information Center. In addition to never receiving many reports, the Information Centers have often been receiving only the initial draft reports from RPFs rather than the final copies that include the changes required by the Department. A more efficient procedure would be for the Department to provide copies of completed, fully approved reports and records following THP approval or submission of an Emergency Notice. This proposed change would deregulate a task presently delegated to RPFs and require the Department to carry it out. In reality, CDF is currently doing this task. Because most RPFs are aware of this, they are not duplicating the effort. This rule change is necessary both to avoid a situation where RPFs are allowed to ignore a rule and to avoid the duplication that results when both the RPF and the Director send completed CAAs, CALs, and site records to the Information Centers.

NECESSITY

There current rule is not clear to the regulated public and the Native Americans. Information is being provided to improve clarity. Further the current rule unduely impacts the regulated public therefore the rule has been changed to lessen that burden.

14 CCR §§ 929.2 [949.2, 969.2] Protection Measures for THPs and Emergency Notices 3 Acres and Larger.

PUBLIC PROBLEM, ADMINISTRATIVE REQUIREMENT, OR OTHER CONDITION OR CIRCUMSTANCE THE REGULATION IS INTENDED TO ADDRESS

CDF has encountered difficulty enforcing LTO violations within archaeological sites. CDF has had to cite Section 1035.3(e) of the Rules that requires the LTO to follow the approved plan. However, there is nothing in the Rules that specifically prohibits unauthorized timber operations within archaeological sites. Unlike violations for other types of deviations from the approved plan, CDF has had problems using 1035.3(e) for archaeological violations. This is due to the fact that specific protection measures for archaeological sites are not contained in the public plan the LTO receives. It is only in the CAA, which is not given to LTOs. LTOs are supposed to inquire about protection measures for significant archaeological sites if they are uncertain [1035.3(f)], and are to be shown the sites on the ground. However, these unique provisions for archaeological resources make enforcement more difficult. For these reasons it is harder for CDF to prove a case. Adding this rule would provide CDF with a clear, specific section to cite when LTOs fail to follow the site protection measures outlined in the plan.

SPECIFIC PURPOSE OF THE REGULATION

A minor editorial changes was made to the tile of this section that replaced “THPs” with the word “Plans”. This was to achieve consistency with the entire set of rules. References in this section were revised to add the complete reference. 14 CCR Section 1035(g) was changed to 1035(h) several years ago but the corresponding reference to it in 14 CCR § 929.2 [949.2,969.2] was not changed. This revision is needed to correct a discrepancy in the rules. New subsections (d) and (e) were added to clarify that the LTO shall not conduct timber operations within the boundaries of an archaeological or historical site identified in the THP, unless such operations are described in the CAA and made part of the THP approved by CDF.

NECESSITY

Archeological site protection developed in the plan must be followed by the LTO as required by 14 CCR 1035.3.

14 CCR §§ 929.3 [949.3, 969.3] Post Review Site Discovery.

PUBLIC PROBLEM, ADMINISTRATIVE REQUIREMENT, OR OTHER CONDITION OR CIRCUMSTANCE THE REGULATION IS INTENDED TO ADDRESS

The rule presently states that no timber operations shall occur within 100 feet of the boundaries until the Director agrees to protection measures (929.3[949.3,969.3](c)). When RPFs determine the site boundary and keep 100 feet away during operations, they are not required to provide CDF with written information including location and size. This is a problem because in those situations CDF is unable to confirm that the site boundaries are correct and that timber operations are indeed staying at least 100 feet away from the site. This rule change is also necessary to achieve consistence with 14 CCR § 929.5 [949.5,969.5] that stipulated that the Director shall ensure that all significant sites in the plan are recorded.

Current rules in subsection (e) stipulate that the Director shall provide the proposed deviation to Native Americans. Changes were made to clarify that such action must be done immediately. Since CDF has only 5 days to review a minor deviation, and the intent is to provide Native Americans an opportunity to submit comments, it is important that no delays occur between the submittal of the deviation and CDF providing it to Native Americans. The phrase “and the NAHC” was deleted to eliminate redundancy. The NAHC is now part of the definition of Native Americans and does not need to be repeated here.

SPECIFIC PURPOSE OF THE REGULATION

Minor editorial changes replacing “THP” and “NTMP” with “plan” were made for rule consistency. In addition, substantive changes are proposed for subsection (d). This rule proposal has two options: Option A retains the word “minor” and Option B deletes the word “minor” in the rule describing the type of deviation that must be filed to the plan when a new site is discovered after plan approval. The Board will consider input from the public before deciding which option it wishes to be included in this regulatory proposal.

Option A, retaining the word “minor” would leave the rule unchanged on this issue. Option B, if the Board chooses that option, would change the process. It would make the discovery of a new site a potential substantial deviation requiring a major amendment and would require a minimum of 30 days to complete re-noticing. Under current rules (14 CCR §§ 1040 and 1090.25), minor deviations may be submitted to a plan or NTMP by the person who wrote the plan without submitting an amendment. The deviation shall be immediately reported in writing to the Director. If Option B is selected, the circumstances following discovery of a previously undiscovered archaeological site may require the RPF to submit a formal amendment to the plan and be reviewed for a minimum of 30 days before work may be completed in that area. The public requested the Board to consider this change in order to allow the public, and Native Americans, and opportunity to review the proposed protection measures for the newly-discovered site.

In addition to this option, the rule proposal will further change subsection (d) to specify the required information that must be provided to the Director. This proposal will require written information about the newly discovered sites be provided to CDF.

NECESSITY

The regulation is being revised to improve clarity and consistency.

14 CCR §§ Section 929.4, [949.4, 969.4] Archaeological Training Requirements.

PUBLIC PROBLEM, ADMINISTRATIVE REQUIREMENT, OR OTHER CONDITION OR CIRCUMSTANCE THE REGULATION IS INTENDED TO ADDRESS

One sentence in the rule language is does not accurate reflect the the desired process following archeological training.

SPECIFIC PURPOSE OF THE REGULATION

The word change will reduce the state workload following training.

NECESSITY

Reduction of impact of rules on state agencies, without reducing services, is important in rulemaking.

14 CCR §§ 929.5, [949.5, 969.5] Site Recording.

PUBLIC PROBLEM, ADMINISTRATIVE REQUIREMENT, OR OTHER CONDITION OR CIRCUMSTANCE THE REGULATION IS INTENDED TO ADDRESS

Current language is vague on who must prepare site records. The requirement for the RPF or the RPF's supervised designee to submit completed site records for significant sites on plans is already present in the rules 929.1[949.1,969.1] (d) and on Emergency Notices is required by 1052(a)(10).

SPECIFIC PURPOSE OF THE REGULATION

This proposal has changed the rule on site recording to clarify that is the RPF or the RPF's supervised designee that is responsible to record significant sites located on plans or Emergency Notices.

NECESSITY

These changes are needed for clarity and consistency.

14 CCR §§ 1037.5(a) Review Teams to be Establish.

PUBLIC PROBLEM, ADMINISTRATIVE REQUIREMENT, OR OTHER CONDITION OR CIRCUMSTANCE THE REGULATION IS INTENDED TO ADDRESS

The new definition proposed in this rulemaking creates a wording problem in this section.

SPECIFIC PURPOSE OF THE REGULATION

This proposal would delete the phrase "the Native American Heritage Commission (NAHC) or local tribes identified by the NAHC" and replace it with "Native Americans as defined in 14 CCR 895.1". This does not change the content of the rule. The new definition of "Native Americans" includes the NAHC and the local tribes identified by the NAHC.

NECESSITY

The revision is necessary for clarity and to make consistent use of this important term throughout the regulations.

14 CCR §§ 1052(a)(10) Emergency Notice.

PUBLIC PROBLEM, ADMINISTRATIVE REQUIREMENT, OR OTHER CONDITION OR CIRCUMSTANCE THE REGULATION IS INTENDED TO ADDRESS

CDF has found the current rules to be inadequate concerning sending a copy of the Confidential Archaeological Letter and site records to the Information Center. It is nearly impossible for CDF to enforce the current rule.

SPECIFIC PURPOSE OF THE REGULATION

This proposal makes editorial changes to improve clarity of existing requirements. It also deletes the requirement for RPFs to send a copy of the Confidential Archaeological Letter and site records to the Information Center, and passes that requirement on to CDF. The other change is to insert a reminder that RPFs must send a copy of the notice to Native Americans. This requirement is already present in the rules (14 CCR Section 929.1[949.1,969.1](d)(2)(C)), but it should be repeated here since this section is the one RPFs more commonly review to determine archaeological requirements for timber operations under Emergency Notices.

NECESSITY

It will be far more efficient, with 100% compliance and no enforcement work for CDF if CDF assumes the task of sending a copy of the Confidential Archaeological Letter and site records to the Information Center.

TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDY, REPORTS, OR DOCUMENTS

The Board did consult the following publications as referenced in this *Statement of Reasons*: none

ALTERNATIVES TO THE REGULATION CONSIDERED BY THE BOARD AND THE BOARD'S REASONS FOR REJECTING THOSE ALTERNATIVES

No other alternatives were presented to, or considered by the Board at this time.

ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT WOULD LESSEN ANY ADVERSE IMPACT ON SMALL BUSINESS

The Board has not identified any alternatives that would lessen any adverse impact on small businesses.

EVIDENCE SUPPORTING FINDING OF NO SIGNIFICANT ADVERSE ECONOMIC IMPACT ON ANY BUSINESS

The Board staff estimated that this regulation should not have any adverse economic impact on any business. While parts of this regulation add some costs to businesses, it eliminates others, which offset the additional costs.

POSSIBLE SIGNIFICANT ADVERSE ENVIRONMENTAL EFFECTS AND MITIGATIONS

The Board has not identified any adverse environmental effects from the proposed action.

Pursuant to Government Code § 11346.2(b)(6): In order to avoid unnecessary duplication or conflicts with federal regulations contained in the Code of Federal Regulations addressing the same issues as those addressed under the proposed regulation revisions listed in this *Statement of Reasons*; the Board has directed the staff to review the Code of Federal Regulations. The Board staff determined that no unnecessary duplication or conflict exists.

PROPOSED TEXT

The proposed revisions or additions to the existing rule language is represented in the following manner:

UNDERLINE indicates an addition to the California Code of Regulations, and

~~STRIKETHROUGH~~ indicates a deletion from the California Code of Regulations.

All other text is existing rule language.

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